

Message Text

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ORIGIN L-03

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APPROVED BY L/AF:MJMATHESON
JUSTICE:D.HOMER
IO/UNP:S.ESCUDEIRO
AF:T.SEELYE
L:G.ALDRICH

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TO AMEMBASSY LUSAKA
INFO AMEMBASSY GABORONE
AMEMBASSY MAPUTO
AMEMBASSY PRETORIA

C O N F I D E N T I A L STATE 169422

E.O. 11652: GDS

TAGS: PDEV, US, RH

SUBJECT: U.S. LAW ON ENLISTMENT IN FOREIGN MILITARY SERVICE

REF: LUSAKA 2055

1. SUMMARY: U.S. COURT CASES SUPPORT JUSTICE'S INTERPRE-
TATION THAT, IN GENERAL, PRESENT U.S. LAW IS NOT VIOLATED
BY A PERSON WHO LEAVES U.S. WITH INTENT TO ENLIST ABROAD
IN FOREIGN MILITARY SERVICE. THIS HAS MADE IT DIFFICULT
TO ESTABLISH VIOLATIONS IN CASES OF U.S. CITIZENS SERVING
IN RHODESIAN ARMED FORCES. END SUMMARY.

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2. THE DEPT IS, OF COURSE, VERY MUCH AWARE OF 18 U.S.C.
959(A), AND HAS SPECIFICALLY CALLED ATTENTION TO IT IN
PUBLIC AND PRIVATE STATEMENTS ON THE PROBLEM OF SERVICE BY
U.S. CITIZENS IN RHODESIAN ARMED FORCES. FYI: THE FOL-
LOWING ARE EXCERPTS FROM A RECENT CONFIDENTIAL REPORT FROM
JUSTICE TO STATE ON THE CURRENT STATUS OF JUSTICE INVESTI-
GATIONS UNDER SECTION 959(A) AND OTHER CRIMINAL PROVISIONS:

"OUR INVESTIGATIONS HAVE BEEN PREDICATED ON ALLEGED VIOLATIONS OF 18 U.S.C. SECTIONS 959(A) (ENLISTMENT IN OR RECRUITMENT FOR A FOREIGN ARMY FROM WITHIN THE UNITED STATES), 960 (SETTING ON FOOT A MILITARY EXPEDITION OR ENTERPRISE

FROM WITHIN THE UNITED STATES, 958 (ACCEPTING AND EXERCISING A COMMISSION IN A FOREIGN ARMY FROM WITHIN THE UNITED STATES), 951 (ACTING AS AN AGENT OF A FOREIGN GOVERNMENT WITHOUT PRIOR NOTIFICATION TO THE SECRETARY OF STATE), AND 22 U.S.C. SECTIONS 611-21 (FOREIGN AGENTS REGISTRATION ACT). YOU SHOULD NOTE THAT THESE STATUTES APPLY ONLY WHEN THE PROHIBITED ACTS ARE DONE WITHIN THE UNITED STATES AND THAT, IN GENERAL, IT IS NOT UNLAWFUL FOR AN INDIVIDUAL IN THE UNITED STATES TO LEAVE THE COUNTRY WITH THE INTENT TO ENLIST ABROAD IN A FOREIGN ARMY, SEE WIBORG V. UNITED STATES, 162 U.S. 632 (1896), OR FOR AN INDIVIDUAL IN THE UNITED STATES TO PROVIDE INFORMATION CONCERNING ENLISTMENT IN A FOREIGN ARMY SO LONG AS THAT INDIVIDUAL DOES SO ON HIS OWN INITIATIVE AND NOT ON BEHALF OF A FOREIGN PRINCIPAL, SEE 11 U.S.C. SECTION 611.

... SINCE NOVEMBER 1975, TWENTY-ONE INDIVIDUALS AND ORGANIZATIONS HAVE BEEN INVESTIGATED BASED ON ALLEGATIONS THAT AT THEY HAVE ENLISTED AS OR RECRUITED MERCENARIES TO SERVE IN RHODESIA. EIGHT OF THESE INVESTIGATIONS REMAIN CONFIDENTIAL

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OPEN; ... THE REMAINDER HAVE BEEN CLOSED. ... OUR INVESTIGATIONS HAVE SHOWN THAT (IN MOST CASES) ... EACH OF THE ALLEGED RECRUITERS WAS MERELY CONVEYING, USUALLY FOR A PRICE, INFORMATION WHICH HE HAD GATHERED CONCERNING HOW TO ENLIST IN THE RHODESIAN ARMY.

... AS TO INDIVIDUALS WHO ARE ALLEGED TO HAVE ENLISTED IN THE RHODESIAN ARMY, EACH SUCH INSTANCE KNOWN TO THIS DEPARTMENT HAS BEEN INVESTIGATED. THE INVESTIGATIONS HAVE SHOWN THAT WHILE INDIVIDUALS WHO ACTUALLY ENLISTED MAY HAVE RECEIVED INFORMATION WITHIN THE UNITED STATES AS TO THE MEANS OF ENLISTMENT, THE ACTUAL ENLISTMENTS OCCURRED IN RHODESIA AND NOT IN THE UNITED STATES. FURTHERMORE, THE INVESTIGATIONS PRODUCED NO EVIDENCE THAT THE INDIVIDUALS WHO ENLISTED GAVE OR RECEIVED ANY PROMISES REGARDING ENLISTMENT WHILE WITHIN THE UNITED STATES AS IS NECESSARY TO CONSTITUTE A VIOLATION OF UNITED STATES LAW, SEE GAYON V. MCCARTHY, 252 U.S. 171 (1920)." END FYI.

3. IN THE CASE OF WIBORG V. U.S. REFERRED TO IN THE JUSTICE REPORT, THE U.S. SUPREME COURT CITED WITH APPROVAL AN INSTRUCTION TO A JURY BY A DISTRICT JUDGE WHICH STATED,

IN PART, THAT " ... IT WAS NOT A CRIME OR OFFENCE AGAINST THE UNITED STATES UNDER THE NEUTRALITY LAWS OF THIS COUNTRY FOR INDIVIDUALS TO LEAVE THE COUNTRY WITH INTENT TO ENLIST IN FOREIGN MILITARY SERVICE" JUSTICE HAS FOLLOWED THIS PRINCIPLE IN ITS ENFORCEMENT OF SECTION 959(A), AND HAS TAKEN THE POSITION THAT THE SECTION IS NOT VIOLATED UNLESS AN INDIVIDUAL ACTUALLY ENLISTS IN THE

U.S. FOR FOREIGN MILITARY SERVICE; OR HIRES OR RETAINS ANOTHER IN THE U.S. TO ENLIST ABROAD; OR HIRES OR RETAINS ANOTHER IN THE U.S. TO GO BEYOND U.S. JURISDICTION WITH INTENT TO BE ENLISTED ABROAD. THUS, MERELY LEAVING THE U.S. WITH INTENT TO ENLIST ABROAD WOULD NOT SUFFICE IF THE INDIVIDUAL HAD NOT BEEN HIRED OR RETAINED TO DO SO.
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THIS IS CONSISTENT WITH A CAREFUL READING OF THE SECTION, AND WITH A LONG LINE OF OLDER FEDERAL CASES ON THE POINT.

4. AS THE JUSTICE REPORT SUGGESTS, IT HAS PROVEN VERY DIFFICULT TO ESTABLISH VIOLATIONS OF THIS PROVISION IN THE CASE OF U.S. CITIZENS SERVING IN THE RHODESIAN ARMED FORCES. IT IS FOR THIS REASON THAT THE INTERAGENCY GROUP ON RHODESIA HAS BEEN CONSIDERING VARIOUS POSSIBILITIES FOR STRENGTHENING U.S. LAW IN THIS RESPECT. VANCE

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